

## Apportioning Colo R. Water

to apportion water between the states lay in Article Six of the U.S. Constitution that allowed Congress to approve interstate treaties. Lobbying by western interests at Carpenter's initiative led to the passage in 1921 of legislation authorizing the states to draft an interstate compact to divide the waters of the Colorado River.

President Harding appointed Secretary of Commerce Herbert Hoover to represent the federal government and to chair the compact commission, which met at Santa Fe in January 1922. Governor Charles Mabey appointed Richard E. Caldwell, a Salt Lake City irrigation and drainage engineer, to represent Utah; and Carpenter represented Colorado. The Harding administration promised that the compact would not violate state rights, and Reclamation Service Director Arthur Powell Davis promised that electrical power revenues rather than the reclamation trust fund or private irrigation interests would pay to build any dam constructed on the river.

Since all states had thirsty lands and inhabitants who needed water, all had a vital interest in the outcome of the negotiations. Moreover, since all of the states had adopted prior appropriation in one form or another, all of them except California feared that appropriations in the lower basin might jeopardize future up-river development. For their part, Californians expected to appropriate all the water they could divert, and only the absence of needed dams and canals lay in their way. Already Davis had begun lobbying for two projects to benefit California: a dam at Boulder Canyon on the Nevada-Arizona border near Las Vegas to regulate stream flows and generate electricity, and a canal (generally called the All-American Canal) to deliver water to California's Imperial and Coachella Valleys.

As representatives of the upper-basin states with the largest populations, Carpenter and Caldwell had essentially two goals. First, they wanted an equitable share of the river's water. The Colorado River drained 40,000 square miles in Utah, a sizeable amount though a distant second to Arizona's 103,000 square miles.

Engineers estimated that with sufficient Colorado River water, Utahns could irrigate an additional 456,000 to 1 million acres within the Colorado River Basin, and that transfers to the Great Basin could irrigate thousands of acres more.

Second, they wanted to limit the application of prior appropriation on water flowing between the states. In *Kansas v. Colorado* (1907), the Supreme Court had required "equitable apportionment" without defining what the term meant. All the negotiators realized that projects in California could easily take all of the river's water long before people in any of the other states could make any substantial, beneficial use required under appropriation.

As the negotiators met in Santa Fe, a new Supreme Court decision made an agreement even more imperative. In *Wyoming v. Colorado* (1922), a decision written by Wyoming native Willis Van Devanter, the court established the requirement—potentially devastating to all the states but California—that all states in interstate river basins recognize prior appropriations made in other states.

In spite of the generally favorable position that *Wyoming v. Colorado* left the Golden State, California had problems of its own. Without additional storage and delivery facilities, Californians could scarcely use the water. Moreover, Californians found out quite rapidly that such irrigation works required congressional approval, and that parliamentary maneuvering by the other states could block such projects until the states settled the question of interstate water apportionment. As the negotiators met, Congressman Phil Swing and Senator Hyrum Johnson from California introduced legislation to dam the Colorado at Boulder Canyon and to construct a canal from the lower Colorado to the Imperial Valley. In a combined show of strength, the other Colorado River Basin states blocked the Swing-Johnson Bill because they feared that in the absence of some agreement, its passage would allow California to appropriate virtually all of the Colorado River water.

Under the circumstances, the other six

states insisted on a formula for equitable distribution between the states. Delph Carpenter, Arthur Davis, and Richard Caldwell offered a reasonable proposal when they suggested that the delegates divide the river into two basins at Lee's Ferry, a point just south of the present site of Glen Canyon Dam, and that they apportion half the flow to the upper basin and half to the lower. In determining the volume of water flowing in the river, the delegates accepted figures extrapolated from a Bureau of Reclamation gauging station at Laguna Dam near Yuma. The station measured an average of 16.4 million acre-feet per year over the period from 1899 to 1920. Taking what consulting engineers perceived as a conservative estimate designed to allow for widely fluctuating flows, Hoover suggested that the delegates guarantee 7.5 million acre-feet per year averaged over a ten-year period to each basin.

As the delegates prepared to accept this compromise, the Arizona delegate, W. S. Norviel, balked. Instead of counting all the water, Norviel wanted the upper basin to deliver 7.5 million acre-feet at Lee's Ferry and, in addition, to allow Arizona to use the entire flow of its tributary rivers, mainly the Gila. The delegates instead agreed to a compromise proposed by Nevada delegate James G. Scrugham, allocating 7.5 million acre-feet to each basin with an additional 1 million guaranteed the lower basin, presumably to be taken from the Gila. The delegates also agreed that deliveries of water to Mexico under any subsequent international treaty would come from surplus water, including Arizona's tributaries. If that proved insufficient, the upper and lower basins agreed to share equally in the reduction necessary to meet the obligation. W. F. McClure of California also insisted on the guarantee of presently perfected rights. The delegates agreed to this because it did not affect the guarantees to each basin.

In the final agreement, no state got all it wanted. Caldwell had wanted to limit the lower basin states to 6 million acre-feet, Norviel wanted to include the guarantee of feasibility studies for a high-line canal to divert

water from northern Arizona to the Gila and Salt River Valleys, and McClure wanted to ensure construction of Boulder Dam and the All-American Canal. The agreement included none of these provisions. Nevertheless, the commissioners approved the treaty on November 24, 1922.

With all the treaty's shortcomings, Caldwell returned to Utah urging immediate ratification. Only Utah Congressman Don B. Colton, a Uinta Basin resident, raised serious objections. Governor Mabey supported Caldwell, and the state legislature made Utah the first state to ratify the treaty, with only one dissenting vote. By February 1, 1923, all the states except Arizona had ratified the treaty, in general after heated discussion of issues of local concern.

Arizona immediately balked because its governor, George W. P. Hunt, scented a conspiracy to take the water of its tributaries. Without Arizona's ratification, the states had no guarantees against the threat of prior appropriation under the Wyoming decision. As it became clear that Arizona would refuse to ratify the agreement, Delph Carpenter suggested that the other six states negotiate a treaty that ignored Arizona but carried essentially the provisions of the seven-state compact. The other states ratified the six-state treaty, but California clouded the ratification by attaching reservations that required the construction of a dam at Boulder Canyon.

Even with the six-state treaty, a number of problems continued to plague Colorado River Basin states. One was the possibility that California would secure passage of the Boulder Canyon Bill and monopolize all the lower basin's share of the water. Secondly, the states had to contend with an increasingly aggressive federal government. In *Wyoming v. Colorado*, Justice Department lawyers had intervened in an attempt to claim all unappropriated waters for the federal government. The Supreme Court sidestepped that question by pointing out that Congress had passed no laws asserting such a right. Still, many people worried because the Supreme Court had decided in the case of *Winters v. United States* (1908) that with the



designation of an Indian reservation, sufficient water was to be reserved for use on the land. According to that decision, the federal government held that the water was implicitly reserved at the time of the designation. Under the circumstances, a number of westerners feared that Washington might try to assert a reserved right for national forests and parks and perhaps even for the undisposed federal lands.

Faced with a number of uncomfortable options, Utah adopted a three-pronged strategy. First, it insisted on the navigability of the Colorado River, since under federal law the streambed of a navigable stream belonged to the state. That would prevent any dam construction without prior state approval. Second, in January 1927, with George Dern's reluctant approval, the Republican-dominated legislature repealed its ratification of the six-state compact. Third, in order to try to salvage an interstate agreement that preserved states' rights, Dern took the lead in organizing a seven-state governor's conference.

The conference met in Denver in August 1927 with Dern as chairman. All the states agreed on the division of water at Lee's Ferry and the delivery of an average of 7.5 million acre-feet to the lower basin. The conference ended in failure, however, largely because California insisted on the right to appropriate any lower-basin water unused after thirty-six years, and Arizona insisted on exempting its tributaries from any future Mexican claims. These were largely disputes between the lower-basin states. Representatives of the upper basin, together with Nevada, which had a small stake in the river in any event, concentrated on amending the Boulder Canyon Bill to prevent California's appropriation of the bulk of the water and to recognize the division of water between the states.

Nevada's Key Pittman took the lead in securing these amendments. First, he insisted that Nevada and Arizona receive 37.5 percent of the revenues from power generated by the dam in lieu of taxes—the same percentage Smoot had demanded in the 1920 Leasing Act.

Next, he proposed that Congress approve the division of water negotiated in the Colorado River Compact and of the 7.5 million acre-feet of water delivered at Lee's Ferry: Nevada to receive .3 million, California to receive 4.4 million, and Arizona to receive 2.8 million. In addition, he proposed that Congress exclude the Gila River from any calculation of water for delivery to Mexico under subsequent treaties. In spite of this concession, the bill also shunned Arizona by providing that it would go into effect after six states had ratified the agreement, providing the six included California. Calvin Coolidge signed the bill in December 1928.

Interest now shifted to California, Arizona, and Utah. Considering construction of the dam and canal and the guarantee of the lion's share of lower-basin water, the California legislature unanimously agreed to the pact.

The interests of Utahns were mixed. On the one hand, citizens wanted to guarantee their rights to Colorado River water and control dam sites within their borders. On the other, some opposed the construction of federal power projects. Smoot and Leatherwood took the strongest stands against the Boulder Canyon Act because they feared the loss of state control and opposed public power. King, however, favored the bill because he believed that the federal government could not legally construct a dam within a state without its approval anyway. Dern wanted a federal declaration of the Colorado River's navigability and thus of Utah's ownership of the streambed, but he believed that would come later and that the advantages of the Boulder Canyon Act and state ratification of the interstate compact presented the preferable alternative. A majority of the legislators agreed with Dern's moderate position, and in March 1929, they ratified the compact by 46 to 7 in the house and 14 to 1 in the senate.

Arizona resisted ratification, and the state returned several times to the Supreme Court in a vain attempt to secure a favorable decision. The Court refused to agree with Arizona, and in 1944, the Arizona legislature ratified the

Colorado River Compact, and the state negotiated a contract with the Bureau of Reclamation for delivery of 2.8 million acre-feet plus half of any surplus water. A 1944 treaty awarded Mexico 1.5 million acre-feet of water.

Some problems remained. In 1948, the upper-basin states negotiated an agreement to apportion their share of the water. Under the agreement, Colorado received 51.75 percent of the water, Utah 23 percent, New Mexico 11.25 percent, and Wyoming 14 percent. The states also set up an Upper Colorado River Commission with authority to determine the use of each state and to curtail use if necessary to meet obligations to the lower basin and to Mexico. Congress ratified the upper-basin agreement in 1949.

In 1963, the Supreme Court settled the dispute between Arizona and California over the distribution of the lower Colorado River Basin water in a way clearly unanticipated by those who drafted the 1928 Boulder Canyon Act. In effect, the Court said that the act—rather than the Colorado River Compact—had apportioned the waters of the Colorado by granting California 4.4 million acre-feet, Arizona 2.8 million, and Nevada .3 million. The Supreme Court decision had a potential of affecting Utah since it reaffirmed the prior reservation of water for Indian tribes first recognized in the 1908 *Winters* decision, and held that the secretary of the interior could allocate water not only between the states but within the states as well. Moreover, the Court ruled that the federal government could abrogate state water law if users had received water from federal reclamation projects.

Several problems remained, all of which continued to cloud the interstate compact. Gauging at Lee's Ferry between 1922 and 1927 showed a mean reconstructed or virgin discharge of 13.8 million acre-feet, which meant that upper-basin states might have to limit themselves to nearly a million acre-feet less than they had anticipated when they negotiated the compact. The treaty with Mexico created additional difficulties because of the provision that the upper and lower basin would have to

share equally in the losses occasioned by deliveries south of the border. The upper-basin states have felt little pinch from the requirements, however, since the compact itself requires each basin to share equally and counts the entire flow of the river, including the enormous outflow from Arizona's tributaries, in the total volume. This construction will continue unless the Supreme Court again misconstrues congressional intent in the Boulder Canyon Act.

## END OF AN ERA

By 1930, Utahns who had begun the decade disillusioned over the failure of the war to end all wars had passed through a decade of oxymoronic contradictions. The economy had grown in depressed prosperity. Following the depression of 1919-22, mining and agriculture limped along while manufacturing, construction, trade, and transportation prospered at much superior levels. In the cities, people struggled to make beautiful, livable places while wallowing in garbage. Politicians offered both progressivism and conservatism. While legislators approved progressive measures such as the Sheppard-Towner Act, governmental efficiency, and the conservation movement, Utah women also suffered through defeat of an increase in the minimum wage, Asians lived under the burden of a restrictive land act, and the Ku Klux Klan spread racism and hatred. Ambivalence drew people into alternately supporting and opposing cigarette prohibition, horse racing, and liquor prohibition. Both the Democratic and Republican Parties harbored contradictory political and social opinion. Progressive George Dern and conservative William King were both Democrats, and social reformer Amy Brown Lyman and machine politician Ernest Bamberger both carried the Republican label. Thus, in many ways, Utahns had suffered through more than a decade of contradiction and indecision by the end of the 1920s.